IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.614 OF 2007
IN
CRIMINAL REVISION APPLICATION NO.1183 OF 2006
IN
CRIMINAL COMPLAINT NO.2692/S/1999

Varashree Narayan ...Applicant.

Versus

Shri Upendra Dalal
and 3 Ors. ...Respondents.

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Mr.Sanjay Bhatia, Adv. for Applicant.
Mr.Rajesh More, APP, for State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 8th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant-orig.complainant and the learned APP for the State.

2. The applicant is complainant in C.C.No.2692/S/1999 which is pending before the learned A.C.MM, 40th Court, Girgaum, Mumbai.

3. The complainant had filed compliant against respondent Nos.1 to 3 under Section 406 and 426 of IPC. In the said case process was issued against the accused only under Section 426 of IPC in the

year 1999. Though the learned Magistrate did not issue process under Section 406 of IPC, the said order was not challenged. Thereafter during the examination-in-chief of complainant the evidence was also led in respect of Section 406 of IPC. This was objected to on behalf of the accused. They submitted that as process was issued only under Section 426 of IPC, the witness should restrict the examination-in-chief only in respect of the said offence.

4. On the other hand the learned Advocate for the applicant-orig.complainant submitted that as the complaint was filed under Section 406 and 426 of IPC, an opportunity should be given to the complainant to lead evidence in respect of the offence under Section 406 of IPC.

5. In this case though process was issued against the accused only under Section 426 of IPC in the year 1999 and though the learned Magistrate did not issue process under Section 406 of IPC, the said order was not challenged. The fact that the order was not challenged shows that the complainant is not aggrieved by the said order. In such case it would not be proper for the

complainant to now lead evidence under Section 406 of IPC.

6. The learned Advocate for the applicant has placed reliance on the decision of the Supreme Court in the case of **Bipin Shantilal Panchal Vs. State of Gujarat & Anr., 2001 SCC (Cri) 417**, wherein the Supreme Court has observed that at evidence taking stage when any objection is raised regarding admissibility of any material or any item of oral evidence, the Court should not pass a detailed order allowing or rejecting the objection and then giving time by suspending trial to enable the parties concerned to move the higher court against such interlocutory order, but, the court should make a notice of such objection and decide it at the last stage of the final judgment.

7. In the present case, no detailed order has been passed nor has the learned Magistrate suspended the trial. Looking to the facts of this case as stated above, no case is made out for interference. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)